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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

Conservatorship of the Person of R.K.

H043255  
(Santa Clara County  
Super. Ct. No. 2015-1-MH-038296)

JAMES RAMONI, AS PUBLIC  
GUARDIAN, ETC.,

Petitioner and Respondent,

v.

R.K.,

Objector and Appellant.

After a jury trial, Appellant R.K. was found to be gravely disabled within the meaning of the Lanterman-Petris-Short Act (LPS Act) (Welf. & Inst. Code, § 5000 et seq.).<sup>1</sup> The court entered judgment based on the jury's verdict, appointing Respondent Public Guardian for Santa Clara County (public guardian) as conservator of the person of R.K. On appeal, R.K. asks us to reverse the judgment arguing that errors throughout the proceedings deprived him of various statutory and constitutional rights.

Shortly after R.K. filed this appeal, the trial court terminated the conservatorship and discharged the conservator. R.K. requests that this court nevertheless address each of the issues he raises on appeal. For reasons that we will explain, we will dismiss the appeal as moot.

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<sup>1</sup> All unspecified statutory references are to the Welfare and Institutions Code, unless otherwise noted.

## **I. PROCEDURAL HISTORY**

R.K. had a long history of mental illness.<sup>2</sup> Following an arrest on June 12, 2015, he was placed on a psychiatric hold for 72 hours under section 5150. This was extended to a 14-day section 5250 hold. He was transported to Barbara Arons Pavilion, the county psychiatric facility. A psychiatrist at the facility referred the matter to the public guardian to petition the court for a temporary LPS conservatorship.

On June 22, 2015, the public guardian served R.K. at the facility with notice of intent to seek a temporary conservatorship, including an advisement of his right to object. On July 1, 2015, the public guardian filed a petition for appointment as temporary conservator and conservator of the person of R.K., alleging R.K. was unable to provide for his basic personal needs of food, clothing, and shelter, by reason of a mental disorder. In the petition, the public guardian also sought the right to refuse or consent to mental health treatment on R.K.'s behalf, and indicated it would request additional disabilities prior to final disposition, under sections 5357 and 5358.

On July 1, 2015, the court granted the request for a temporary conservatorship ex parte based on the declaration of the public guardian, and appointed the Public Defender of the County of Santa Clara as R.K.'s counsel. The order appointing the temporary conservator indicated that the conservatorship would automatically expire 30 days after the order, "provided, however, that this Temporary Conservatorship may be extended for up to six (6) months if the Conservatee requests a continuance in order to have a trial on the issue of grave disability or if the court otherwise grants a continuance."

The court set the initial hearing on the petition to establish a conservatorship on July 29, 2015. R.K. was not transported from the county hospital to the hearing. The public defender appeared on his behalf; the Santa Clara County Office of County Counsel represented the public guardian. The court continued the hearing on the petition at the

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<sup>2</sup> We do not discuss the facts related to R.K.'s history of mental illness and the evidence presented at trial because they are not relevant to the issues before us.

public guardian's request. The record does not reflect that the public defender objected to the requested continuance. The record also does not reflect that the public defender represented that her client agreed to waive his appearance at the proceedings or agreed to the continuance. Over a period of more than four months, the public guardian requested and obtained five such continuances. The record reflects no objection by R.K.'s counsel, or any affirmative representation from her that R.K. consented to the requested continuances and waived his appearance at court. R.K. was not transported and did not personally appear at any of the hearings continuing the matter.

On December 3, 2015, the public defender demanded a jury trial on behalf of R.K. and stated that he wished to be present in court. The court set the matter for a trial setting conference on December 7, 2015. At that hearing, both attorneys appeared, but R.K. did not. The public defender again demanded a jury trial. The court set the trial to commence on December 14, 2015, noting, "[t]his case has priority as the conservatee has not waived time." Prior to the trial, R.K. filed motions in limine seeking, among other things, to represent himself at the trial and to contest the assigned public defender's representation of him at the trial.

R.K. appeared for trial on December 14, 2015, with the public defender. At R.K.'s request, the court conducted a *Marsden*<sup>3</sup> hearing to determine whether R.K. could discharge his attorney and represent himself. One of R.K.'s objections to representation by the public defender was that she consented to continuances of court dates without his agreement. The public defender represented that she had met with R.K. commencing in August, that he called her sometimes several times a day, that he declined to exercise his right to a writ of habeas corpus, that he provided her with the names of witnesses he

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<sup>3</sup> In *People v. Marsden* (1970) 2 Cal.3d 118, the California Supreme Court outlined the process by which a criminal defendant could seek to discharge appointed counsel for ineffective assistance of counsel. Proposed conservatees in LPS Act proceedings are also entitled to effective assistance of appointed counsel. (*Conservatorship of David L.* (2008) 164 Cal.App.4th 701, 710.)

wanted called at trial, that he was clear that he wanted a jury trial, and that she had honored that request. The public defender also indicated that her paralegal had investigated whether R.K.'s sister would provide third party assistance to R.K., but his sister wanted him to receive mental health treatment. The court denied R.K.'s request for substitution of counsel both immediately following the *Marsden* hearing, and when R.K. reiterated the request for a new attorney during the trial.

During the *Marsden* hearing, the public defender stated, "[R.K.'s] always had the availability of contacting me, but he elected not to until the public guardian elected to go permanent. How it works is that somebody stays on a temporary conservatorship up to a maximum of six months. The Public Guardian's Office did ask for continuances. And, for the record, I did indicate to the Public Guardian's Office that [R.K.] had basically used his right to contest the temporary conservatorship. His next right was to have a jury trial on the request to go permanent. [¶] Rather than do the summary hearing, [R.K.] indicated he wanted to go directly to jury trial. I honored his request. . . . That's why we're here today. We didn't go to any evidentiary hearings in the interim because, first, we didn't have a right to, as a matter of law and due process under the LPS Act, but [R.K.'s] been very clear that he wants a jury trial. [¶] The fact of the matter is, every time the public guardian asks for a continuance, it's not a custom or practice of the court to bring the conservatees to each hearing because it would just be cost prohibitive, Your Honor . . . So [M.K.] had a hearing on the 14-day hold. He had a hearing on the temporary conservatorship, which is Day 15 to 6 months, by statute and by case law. And so [M.K.'s] has had—and exercised his right to each of those proceedings. His next right is to a jury trial, which is exactly this proceeding that we're having here today."

R.K. also asked the court to open the trial to the public, objecting to the public defender's belief that the proceedings should be closed. Prior to empaneling the jury, R.K. asked for a continuance of the trial on the ground he had several witnesses he wished called at trial. The court denied his request, but the public defender obtained the

names of the witnesses and represented that she would make efforts to have them interviewed for trial, noting that they did not appear relevant on the issue of whether R.K. was presently gravely disabled.

On December 16, 2015 the trial commenced. Following deliberations, the jury returned a verdict finding R.K. gravely disabled due to a mental disorder. Based on this verdict, the court ordered that R.K. be subject to certain “disabilities,”<sup>4</sup> precluding him from possessing a driver’s license or firearms, removing his right to refuse or consent to medical treatment and mental health treatment, whether or not related to his being gravely disabled, and removing his right to enter into contracts. R.K. timely filed a notice of appeal under Code of Civil Procedure section 904.1, subdivision (a)(1).

On April 28, 2016, the trial court terminated the conservatorship at the public guardian’s request, because R.K. could no longer be located within the jurisdiction of the court.<sup>5</sup>

## II. ANALYSIS

R.K. raises several arguments on appeal: the conservatorship is invalid because the court deprived R.K. of his right to be present and have a timely trial; the county counsel committed prosecutorial misconduct in failing to produce him at several hearings; the court denied appellant his right to a public trial in violation of his constitutional rights; the court denied appellant’s right to a fair trial in refusing to grant his request for a continuance; and the court improperly denied both his *Marsden* motion and his request to represent himself.

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<sup>4</sup> Once appointed, the conservator has general powers as specified in Probate Code section 2400 et seq., as well as certain additional powers as ordered by the court. (§ 5357.) The court can also impose specified disabilities against the conservatee. (*Ibid*; § 5358, subd. (b).)

<sup>5</sup> The record on appeal does not provide additional information about the basis for the court’s order terminating the conservatorship. At oral argument, R.K.’s attorney indicated R.K. left the secured psychiatric facility.

We do not reach the substance of R.K.’s contentions as the trial court terminated R.K.’s conservatorship in April 2016. “As a general rule, ‘ “the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” ’ ” [Citation.] Thus, an ‘ “action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events.” ’ [Citations.] Put another way, ‘ “[a]n appeal should be dismissed as moot when the occurrence of events renders it impossible for the appellate court to grant appellant any effective relief.” ’ [Citation.]” (*People v. Pipkin* (2018) 27 Cal.App.5th 1146, 1149-1150, review den. (Jan. 16, 2019) (*Pipkin*).) Here, appellant seeks reversal of the judgment finding him gravely disabled and appointing the conservator. The trial court’s termination of the challenged conservatorship, however, prevents us from granting appellant any effective relief.

Although appellant acknowledges that his appeal is potentially moot, he requests that this court nevertheless address each of the issues he raises in his appeal because of the “continuing stigma” of the conservatorship. Citing *Conservatorship of Carol K.* (2010) 188 Cal.App.4th 123, 133 and *Conservatorship of Wilson* (1982) 137 Cal.App.3d 132, 136, he also argues that R.K. suffers collateral consequences even after termination of the conservatorship. We are not persuaded by his argument, as appellant never specifies what those collateral consequences are, or how they affect him.

We acknowledge that we may exercise our discretion to decide an “otherwise moot case because it raises important issues that are capable of repetition but likely to evade review.” (*In re Lemanuel C.* (2007) 41 Cal.4th 33, 38, fn. 4.) “It is true that the general rule regarding mootness ‘is tempered by the court’s discretionary authority to decide moot issues.’ [Citation.] For instance, . . . , ‘[w]hen an action involves a matter of continuing public interest that is likely to recur, a court may exercise an inherent

discretion to resolve that issue, even if an event occurring during the pendency of the appeal normally would render the matter moot.’ [Citations.]” (*Pipkin, supra*, 27 Cal.App.5th at p. 1150.) Under this standard, several of R.K.’s contentions clearly concern issues particular to the facts of this case, such as his request for a public trial, his request for a continuance, and his request to discharge his attorney and represent himself, such that we find they do not raise a matter of continuing public interest that is likely to recur. We therefore decline to address them.

R.K.’s claims related to his right to be produced in court and to have a timely trial to determine whether he was gravely disabled could raise issues capable of repetition appropriate for review. Here, R.K. contends that his statutory and due process rights were violated because there was no hearing conducted within 30 days as required under section 5365 on the petition to establish the conservatorship. He asserts that his due process rights were violated because he was not transported to court for that hearing until his attorney demanded a jury trial on his behalf several months later. He contends that he was denied his right to timely assert a jury trial demand under section 5350, subdivision (d) as a result of continuances granted by the trial court, and that the court exceeded its authority when it granted multiple continuances, leaving in place a temporary conservatorship in excess of the 30 days established in section 5352.1 subdivision (c) governing the duration of temporary conservatorships.

In its initial order, the trial court stated that a temporary conservatorship “may be extended for up to six (6) months if the Conservatee requests a continuance in order to have a trial on the issue of grave disability *or if the court otherwise grants a continuance.*” (Italics added.) Although we do not address today whether the time periods established in the LPS Act can be waived under appropriate circumstances, we note no authority in the LPS Act for the trial court on its own to continue a temporary conservatorship beyond 30 days absent a timely jury trial demand (that is, made within

the 30-day period) by the proposed conservatee under section 5350, subdivision (d). (See section 5352.1, subds. (b), (c).)

However, after a thorough review of the record, we conclude that it is unclear what occurred in R.K.'s case. We therefore decline to reach his claims and find them moot as the conservatorship has been terminated.

### **III. DISPOSITION**

The appeal is dismissed as moot.



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Greenwood, P.J.

WE CONCUR:

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Grover, J.

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Danner, J.

Conservatorship of R.K  
No. H043255